

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LESLIE J. MAWER,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:13-cv-00618

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

/

REPORT AND RECOMMENDATION

This matter is before the Court on Notice of Application for Attorney's Fees and Costs Pursuant to the Equal Access to Justice Act (EAJA), 28 USC 2412. (ECF No. 23). Plaintiff's counsel seeks \$4,310.22 in fees and costs. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that the motion be **granted in part and denied in part**.

Pursuant to the Equal Access to Justice Act (EAJA), the prevailing party in an action seeking judicial review of a decision of the Commissioner of Social Security may apply for an award of fees and costs. *See* 28 U.S.C. § 2412(d)(1)(A). While a prevailing party is not entitled, as a matter of course, to attorney fees under the EAJA, *see United States v. 0.376 Acres of Land*, 838 F.2d 819, 825 (6th Cir. 1988), fees and costs are to be awarded unless the Court finds that the Commissioner's position was "substantially justified" or that "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). Defendant has not asserted that her position was substantially justified.

On February 25, 2014, the Honorable Janet T. Neff vacated the Commissioner's decision and remanded the matter for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g).

Counsel now moves for an award of attorney's fees pursuant to the EAJA. Specifically, counsel seeks to recover \$3,891.89 in attorneys fees (20.8 hours multiplied by an hourly rate of \$187.11).

Counsel requests that he be compensated at an hourly rate of \$187.11. The Court finds this amount unreasonable and instead finds more appropriate the increased hourly rate of \$175 the Court has recently approved. *See Johnson v. Commissioner of Social Security*, 2015 WL 5944186 at *1-3 (W.D. Mich., Oct. 13, 2015); *Martin v. Commissioner of Social Security*, 2015 WL 3513770 at *2 (W.D. Mich., June 4, 2015). The Court finds the amount of hours expended in this matter to be reasonable.

Additionally, the Court notes that Plaintiff is entitled to recover her filing fee. *See, e.g.*, *Tetzlaff v. Commissioner of Social Security*, 2015 WL 2354741 at *2 (W.D. Mich., May 15, 2015); 28 U.S.C. § 1920; 28 U.S.C. § 2412. Plaintiff also seeks to recover postage expenses incurred in the amount of \$18.33. These expenses are all properly recoverable under the EAJA. *See, e.g.*, *Grabowski v. Commissioner of Social Security*, 2015 WL 1808475 at *5 (E.D. Mich., Apr. 21, 2015); *Kane v. Astrue*, 2012 WL 5357781 at *6 (N.D. Ohio, Oct. 31, 2012).

Accordingly, the undersigned recommends that EAJA fees be awarded in the amount of four thousand, fifty-eight dollars and thirty-three cents (\$4,058.33). However, in light of the Supreme Court's decision in *Astrue v. Ratliff*, 560 U.S. 586 (2010), the undersigned further recommends that any judgment or order entered for EAJA fees be entered in Plaintiff's favor. *Id.* at 591-93; *see also*, 28 U.S.C. § 2412(d)(1)(A) (the EAJA awards fees "to a prevailing party").

CONCLUSION

For the reasons articulated herein, the undersigned recommends that the Notice of Application for Attorney's Fees and Costs Pursuant to the Equal Access to Justice Act (EAJA), 28 USC 2412, (ECF No. 23), be **granted in part and denied in part** and Plaintiff awarded four thousand, fifty-eight dollars and thirty-three cents (\$4,058.33) pursuant to the Equal Access to Justice Act.

OBJECTIONS to this report and recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within such time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Respectfully submitted,

Date: October 25, 2016

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge